

STATE OF MINNESOTA

FILED

DISTRICT COURT

COUNTY OF RAMSEY

MAR 17 2010

SECOND JUDICIAL DISTRICT

~~RAMSEY DISTRICT COURT~~

In Re:

2JD ORDER 3

Source Code Evidentiary Hearings in Criminal Cases

Consolidated file no. 62-DT-VB-10-5

In Re:

Source Code Evidentiary Hearings in Civil Cases

Consolidated file no. 62-CV-10-1741

RECITALS

1. This order is intended to provide for the efficient administration of criminal and implied-consent cases in the Second Judicial District (2JD) that are subject to, and require the coordination of, the following judgment and orders:

- a. the federal consent judgment in *State of Minnesota v. CMI of Kentucky, Inc.* (U.S. D. C. Minn., civil file no. 08-603), ("consent judgment") dated July 16, 2009.
- b. the Minnesota Supreme Court consolidation order issued on January 11, 2010. *See*, 2JD Public Website.
- c. 2JD Orders 1 and 2. *Id.*

2. Under the federal consent judgment, Minnesota litigants may obtain the source code for the Minnesota Model Intoxilyzer 5000 EN when three documents have been executed: (1) an order or finding relating to the production of the source code; (2) a protective order; and (3) a non-disclosure agreement. The issuance of documents (1) and (2) was left to the Minnesota state court.

3. After the consent judgment was issued, the Minnesota Supreme Court provided for the consolidation of source-code cases filed in Minnesota state court.

4. Following the consolidation, a question has arisen as to whether the burden of accommodating the consent judgment, as described in paragraph 2, rests upon the district in which a case is first filed or upon the judge presiding over the statewide consolidation. To the extent that the burden may rest upon the district where a case is first filed, the undersigned has been “assigned to administer, hear, and decide all pre-trial matters concerning challenges to the reliability of the Intoxilyzer 5000EN results based on the source code of the instrument, including scheduling, discovery, and an evidentiary hearing” in the Second Judicial District. *2JD Orders 1 and 2*. Therefore, the undersigned has the authority to accommodate the consent judgment if that burden rests upon this district.

5. The consent judgment first requires a document in which “the state district court judge presiding over the criminal DWI or civil implied consent case has ordered production of the Source Code or has made an express finding that the Source Code is relevant or material to the admissibility or reliability of a breath-alcohol test result at issue in the case[.]”

6. The first document may take one of two forms: (a) an order directing production of the source code, or (b) an express finding that the source code is relevant or material. The first form, “an order,” would appear to be appropriate in cases where production of the source code is not contested. The second form, “an express finding,” would appear to apply to cases where production of the code is contested. *See, State v. Underdahl*, 767 N.W.2d 677 (Minn. 2009) (*Underdahl II*).

7. Consistent with this court's authority to facilitate the consolidation of these cases in the Second Judicial District, the most efficient manner in which to accommodate the first required document is to issue a standing order that applies to all Second Judicial District cases, but allows the State or a state agency to contest production of the source code on a case-by-case basis should they elect to do so. Because it appears that the State has not been contesting source-code requests since the statewide consolidation, this court need not presently consider whether such a contest is subject to the jurisdiction of the district in which a case was first filed or the judge who presides over the statewide consolidation.

8. The second document required under the consent judgment is a protective order. The consent judgment appended a proposed protective order sufficient to meet the needs of the judgment, its "Exhibit 1," which is incorporated herein by reference.

9. Consistent with this court's authority to facilitate the consolidation of these cases in the Second Judicial District, the most efficient manner in which to accommodate the second required document is to issue a protective order that applies to all Second Judicial District cases.

10. As to consent documents filed with this court as required by 2JD Order 1, the case manager can accept for filing only those consent documents that, on their face or by other reference, clearly identify the case name and the Second Judicial District Court file number to which the consent document pertains. The failure to provide such information has been and will be an unnecessary burden on limited court resources.

For those reasons, this court issues the following standing order.

IT IS ORDERED:

1. The State of Minnesota shall produce the source code for the Minnesota Model Intoxilyzer 5000EN in all cases filed in the Second Judicial District where the production of the source code is not contested.
2. The terms and conditions prescribed by Exhibit 1 of the federal consent judgment is hereby incorporated by reference as a protective order in all cases filed in the Second Judicial District that are subject to the requirements of the federal consent judgment.
3. The Second Judicial District shall not accept for filing any document purporting to consent to participate in the statewide source-code consolidation unless the document states, on its face or by other reference, the case name and the Second Judicial District Court file number to which the consent document pertains.
4. All orders of this court that pertain to the management of cases subject to this district consolidation shall be posted on the Second Judicial District public website. All parties having an interest in this litigation shall be responsible for accessing such orders in a timely manner, and shall be subject to those orders.

March 17, 2010

BY THE COURT

A handwritten signature in cursive script, reading "W H Leary III". The signature is written in dark ink and is positioned above a horizontal line.

William H. Leary III
District Court Judge